

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA)
v.) CRIM. CASE NO. 1:22-cr-242-ECM
LEROY THOMAS JOYNER, JR.) (WO)

ORDER

Now pending before the Court is the Government's motion to stay (doc. 54) filed on January 27, 2023.

On September 19, 2022, the Magistrate Judge, pursuant to the Court’s standing order, denied the Defendant permission to file *pro se* pleadings because he was represented by counsel. (Doc. 13). On January 17, 2023, the Defendant filed a *pro se* notice of appeal (doc. 41) challenging the Magistrate Judge’s order. Although the Defendant suggests that he is challenging his right to proceed *pro se*, a review of the docket reveals that the order from which he appeals is one that disallows the Defendant’s *pro se* filings because he was represented by counsel. On January 23, 2023, the Magistrate Judge granted the Defendant’s motion to proceed *pro se*¹ and permitted his retained counsel to withdraw. (Doc. 45). Because the Defendant is proceeding *pro se*, he has been permitted to file his own motions and has multiple motions pending before the Court.

While the filing of a notice of appeal generally strips the Court of jurisdiction, *see United States v. Diveroli*, 729 F.3d 1339, 1341 (11th Cir. 2013), the filing of a frivolous or

¹ The Defendant has stand by counsel appointed to assist him. (Doc. 45).

dilatory appeal will not divest the Court of jurisdiction. *See generally United States v. Farmer*, 923 F.2d 1557, 1565 (11th Cir. 1993).

The Defendant opposes a stay in this criminal case. The Defendant is proceeding *pro se* with stand by counsel. The Defendant filed an interlocutory appeal from an order not immediately appealable, which is not sufficient under the circumstances of this case to divest the Court of jurisdiction or warrant a stay.² *See United States v. Vicaria*, 963 F.2d 1412, 1415 n.2 (11th Cir. 1992) (citing *United States v. Hitchmon*, 602 F.2d 689, 691 (5th Cir. 1979) (en banc) for the proposition that an appeal of a nonappealable order does not divest the district court of jurisdiction.).

Accordingly, upon consideration of the motion to stay, and for good cause, it is

ORDERED that the motion to stay (doc. 54) is DENIED.

DONE this the 13th day of February, 2023.

/s/ Emily C. Marks
EMILY C. MARKS
CHIEF UNITED STATES DISTRICT JUDGE

² The Court questions the timeliness of the appeal which may render the appeal frivolous.